Supreme Court, U.S.
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No. 03153

In The

Supreme Court of the United States

DARIO KRSTIC, PETITIONER
AGENCY CASE NO. A 29 928 192,

Petitioner,

vs.

JOHN ASHCROFT, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERITORARI

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QUESTIONS PRESENTED

1. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), overruled in part by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) in that the Substantial Weight of the Evidence proves Petitioner suffered Past Persecution.

2. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above in that the Substantial Weight of the Evidence proves Petitioner would be Singled Out if forced to return to Bosnia or the Former Republic of Yugoslavia.

3. Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof and the requirements of *INS v. STEVIC*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

QUESTIONS PRESENTED – Continued

4. Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief under the Convention Against Torture pursuant to 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof in showing that it is more likely than not that he would be "tortured" on account of his Political Opinion and National Origin in Serbia by the Serbian Government or its agents directly or with the knowledge and acquiescence of the current Bosnian Government.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided my case was February 9, 2004.

This Court's jurisdiction is conferred by 28 U.S.C. Section 1254(1), 28 U.S.C. Section 2350 and INA Section 242, 8 U.S.C. Section 1252 and jurisdiction below at the BIA was conferred by 8 C.F.R. Section 3.1(b) re the Appeal from the Decision of the Immigration Judge Denying Appellant's Application for Relief from Removal/Deportation pursuant to INA Section 237(a)(1)(c)(i), 8 U.S.C. Section 1227, et seq. – in United States in violation of law, remaining longer than permitted. Appellant filing for Asylum under INA Section 208(a), Withholding of Removal under INA Section 241(b)(3), 8 U.S.C. Sections 1158 and 1251(b)(3), respectively, and/or Relief under the Convention Against Torture, 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18.

STATUTORY PROVISIONS INVOLVED

INA Section 208(a), INA Section 241(b)(3) and 8 U.S.C. Section 2242 re 8 C.F.R. Sections 208.16 to 208.18.

STATEMENT OF THE CASE

Petitioner Dario Krstic was admitted on a B-2 Visitor Visa with a fraudulent passport obtained for him by a friend in his native Yugoslavia, now Serbia-Montenegro, on 01-06-1993 in Detroit, Michigan. C.A.R. 064-065. Krstic is a citizen of the Former Yugoslavia but claims he is not legally a citizen of any country and has no identifiable rights to citizenship in any country in the future. C.A.R. 320 and 430. Petitioner filed for Asylum several weeks after coming to the United States, the I-589, Request for Asylum being dated 02-15-1993. Krstic claimed he would be persecuted on account of his Political Opinion and National Origin if forced to return to the Former Yugoslavia, seeking relief pursuant to INA Section 208(a) re Asylum; INA Section 241(b)(3) re Withholding of Removal and, later, under the Torture Convention Regulations, 8 C.F.R. Sections 208.16-208.18 C.A.R. 057-058 and 319. On or about 09-10-1998 Krstic had his Affirmative Asylum Interview in Miami, Florida. C.A.R. 323. A Notice to Appear (hereinafter NTA) was issued on 09-22-1998 and Krstic appeared at a Master Calendar Hearing on 01-12-1999 before Immigration Judge Mahlon F. Hanson in Miami Immigration Court. On 06-23-1999, Petitioner appeared in Immigration Court for his Individual hearing, his former counsel, Alexander C. Urbanoff, having made an earlier entry of appearance, conducting the prior Master Calendar Hearing telephonically from Chicago, Illinois, C.A.R. 078, and appearing in person on 06-23-1999. C.A.R. 094. The Immigration Judge (hereinafter IJ) rendered his Oral Decision of 06-23-1999, C.A.R. 057-075, Denying Krstic's requested relief as well as finding Petitioner ineligible for Voluntary Departure pursuant to INA Section 240B(b), Ordering Petitioner removed and deported to Bosnia.

C.A.R. 074. On 07-21-1999 Petitioner, through above named counsel, filed a timely Notice of Appeal with the Board of Immigration Appeals (hereinafter BIA). Petitioner's former counsel Withdrew as Attorney of Record with the BIA acknowledging such and placing the Motion to Withdraw in the record of proceedings. C.A.R. 010. On 12-26-2002 the BIA issued its Decision in Krstic's case, another of the infamous two (2) line Decisions with no opinion, Denying Petitioner's Appeal. On January 23, 2003 Petitioner timely filed a Petition for Review with this Court.

STATEMENT OF THE FACTS

Petitioner Dario Krstic was born on January 9, 1960 in the town of Zadovici, Bosnia in Herzegovina, a citizen of the Former Republic of Yugoslavia (hereinafter FRY). C.A.R. 063 and 105. At present Petitioner claims he has no citizenship, C.A.R. 105, in any country, C.A.R. 063, and Petitioner's Expert Witness, Robert M. Hayden, J.D., Ph.D., Associate Professor of Anthropology, Associate Professor of Law and Director, center for Russian and East European Studies at the University of Pittsburgh, Pennsylvania, C.A.R. 239, concluded that Krstic is not a citizen of Serbia/FRY and though he may be a citizen of the Federation of Bosnia and Herzegovina (hereinafter FBH), republic of Bosnia and Herzegovina, Krstic's citizenship would only be in the Muslim-controlled parts where his Serb name would render him subject to persecution on ethnic grounds. C.A.R. 239. Petitioner was also subject to persecution in the Serbian entity in Bosnia on account of Political Opinion in Professor Hayden's Expert Opinion, the Professor stating that "Mr. Krstic is now a man without a country." C.A.R. 239. Krstic's father is a Serbian and

his mother is Muslim. C.A.R. 063. The father passes on Ethnic Identity through the surname to his children. C.A.R. 228. Krstic's first is a name most commonly found among Croats and thus he would have no chance of going undetected as a Serb, at least in Bosnia, the country the I.J. Ordered Petitioner removed and deported to C.A.R. 236 and 074. Petitioner's *mixed* Ethnic background makes him subject to hostility and persecution by both governments and non-government agencies as well as the general population. C.A.R. 231, 022 and 065-067.

Petitioner played professional Soccer until his career was ended by injury and decided to join the FRY Military in 1982 because there was an opportunity to get a very good education under the sponsorship of the FRY Army. C.A.R. 108-109. Krstic was on Active Military Duty with the Yugoslav National Army from 1982 to 05-13-1992. C.A.R. 320. Petitioner rose to the rank of Captain, having a Degree in Geodesy, and worked in the Military Institute of Geodesy in Belgrade from 1988 to 1992 and, prior to that, Sarajevo, from 1982 to 1988. C.A.R. 320, 063 and 022. Krstic was responsible for reproduction of maps and topographical data. C.A.R. 063. Petitioner also admitted to being a member of the Communist Party, as were all members of the Army during that period. C.A.R. 063. Krstic noted in his I-589, Request for Asylum in the U.S. application that he submitted his written request for revocation of his Party Membership *a year before* the old Yugoslav Communist Party ceased to exist in 1986. C.A.R. 321. Petitioner's father, who also was a member of the Former Yugoslav Communist Party since 1959, had also requested and obtained revocation of his membership in 1979, which at the time required much courage and that he suffered the consequences thereafter. C.A.R. 321. When

Petitioner finally completed the revocation procedure in 1988, it was an almost unprecedented case for an Active On Duty Military Officer to have done, C.A.R. 321 and 112, doing so publicly at a meeting of Communist Party members by standing up and putting his Party I.D. on the Chairman's desk and walking out. C.A.R. 112.

Krstic's problems in the military had begun in 1985 while he was stationed in Sarajevo. C.A.R. 023, 063 and 321. Not only did Krstic believe he was discriminated against due to his mixed ethnic identity but also because of his political opinions and action, being subject to Army Security Police interrogations that accused him of collaborating with strangers, questioning his loyalty. C.A.R. 022, 063 and 321. Petitioner was interrogated three (3) times: (1) once during the Winter Olympic Games in Sarajevo, C.A.R. 022, 063 and 321; (2) again after his first visit to the United States in 1987, C.A.R. 022, 064, 321 and 113-114. Petitioner stated that simple friendship was considered espionage and that he was interrogated, had to write reports, had his apartment searched several times and his telephone wire-tapped. C.A.R. 321.

After visiting the U.S. for the first time in late 1986 to see his Aunt for a month or so, C.A.R. 112, Krstic testified that he was at first debriefed, which was normal procedure for every Officer after travel outside of the FRY. C.A.R. 113. *But after that*, Krstic testified, he was AGAIN questioned by Army Security Officers for glorifying the style and values of life in the United States. C.A.R. 113. Krstic stated he was tipped off by a Commanding Officer from a Police Unit that was stationed in the same facility and area of the Military Geographic Institute, who later became a high ranking General in the Muslim-dominated Bosnian Army. C.A.R. 113. Krstic contends he was subject

to persecution by the Army Security Police on account of his Political Opinions and actions as set forth above and in the record. C.A.R. 321. Petitioner explained that he was never formally Arrested or Detained and never formally Accused or Charged with any treason, collaboration with the enemy or any other wrongdoing. C.A.R. Krstic stated he suffered mental persecution ("nervous pressure"), job discrimination, unreasonable or illegal searches of his apartment, unreasonable interrogations with possible very serious consequences; unreasonable invasion of privacy re telephone wiretaps and that, later, when Milosevic took power, the persecution shifted from being primarily on account of Political Opinion to that of National Origin or Ethnic persecution C.A.R. 321 and 323.

Petitioner's other trips outside the country were to Germany and Italy in 1989 where he was invited to participate in the Fair Drupok (phonetic sp.), the biggest fair in the reproduction technology, a field Krstic had published a couple of articles in. The Military started creating problems for Krstic even before he left for Germany, since the Military was against his attending the Fair, but the sponsors stated they would pay for the trip for three (3) only if Krstic went. C.A.R. 114. Upon his return, Petitioner was questioned during interrogation who he was meeting there, why they wanted Krstic there and why it was critical that he was a member, C.A.R. 114, which should have been obvious given Krstic's published articles and position in the FRY Army. Petitioner's *second trip to the United States* was in July of 1991 when he returned to help his Aunt who had some trouble in her personal life. C.A.R. 14. Petitioner was again interrogated, stating again that *it went beyond normal procedure*. C.A.R. 114-116.

Upon his return after six (6) weeks in the United States, in August-September, 1991, Petitioner testified that the war in Croatia had already started and the war in Slovenia was already over. C.A.R. 115. Krstic testified he believed the Army's "function is to protect freedom from outside aggression" and, after he came back in August – September, 1991 that following year saw a shift in purpose for the military: "changing commanding officers, putting only one (1) nationality, having meetings just with officers of one nationality, C.A.R. 115, accepting and emphasizing nationalistic politics and "ethnic cleansing". Petitioner noted that the Military was "very Serb dominant". C.A.R. 115 and 110. Slobodan Milosevic, the former head of the FRY Communist Party, and his wife, "Mira", a University Professor and devout Marxist-Leninist, took Serbia on the road to "ethnic cleansing" and war crimes. C.A.R. 023, 064 and 116. Krstic publicity protested the corruption of the Army by Milosevic and his henchmen, writing a resignation letter explaining his anti-Milosevic Political Opinion and objections to the Military Policy being planned and pursued that he wanted no part of. C.A.R. 023, 064 and 116-118. Krstic testified that he believed that Milosevic and the Generals in the Serb-dominated Army that were with him were trying to manipulate all officers who had any kind of connections with Bosnia, (Petitioner's mother being Muslim and Petitioner being born in Bosnia) to participate with the illegal "Paramilitary Forces," to commit genocide in Bosnia, Serbia and elsewhere. C.A.R. 023, 064, 116-118. Krstic testified that he Resigned as a public act, with other Officers around, even a Security Officer was present, and Petitioner personally brought his Resignation and gave it to be filed. Krstic testified that he wanted to express his opinion which he summarized as that of "not supporting unprofessionalism, politics and

methods to favor anybody, and intolerance, and in the worse case, killing innocent people." C.A.R. 117-118, 064 and 023.

Petitioner decided to leave Belgrade, Serbia in January, 1993 because of his Political Opinions and the increasing danger of being a member of the Moslem ethnic minority in Serbia. C.A.R. 023 and 119. Further, Krstic testified that he received late night telephone calls that in the beginning said nothing, only later to turn into threats of saying "we'll get you." C.A.R. 119 and 064. Petitioner testified that his roommate, who also worked at the Military Geographic Institute facility heard at meetings that those who disagreed with the Milosevic Government politics will have their day of reckoning to come. C.A.R. 119 and 064. Krstic testified that his roommate, Boric (phonetic sp.), then told him later, about September-October, 1992, that those in the Military loyal to the Milosevic policies were "mentioning my name" and that they will deal "with Dario, too." C.A.R. 119. Following that, about two (2) months later in December 1992, Petitioner testified he received a call from a friend who worked for the Military Police who told him that his name is on the list and that after telling him that his friend just hung up the phone. C.A.R. 119.

Petitioner's correspondence, translated to English, re his Resignation from the FRY Military is attached at C.A.R. 248-256. Previous to the phone calls and threats, Krstic had tried to purchase a condo apartment in Bosnia about 3-4 weeks after he resigned his position as a Captain at the Military Geographic Institute in Belgrade, Serbia. C.A.R. 118 and 064. Petitioner tried to obtain ownership documents for the condo apartment he purchased but couldn't get them. C.A.R. 118 and 064. Krstic

was also denied citizenship in Bosnia even though he had been born there and, further, denied both on an Identity Card and Worker's Permit. C.A.R. 118. Krstic testified that he believed he was denied the above because "I'm not pure Serb, I'm born in Bosnia" and that war and disputes about Bosnia were escalating then. C.A.R. 119.

Krstic, fearing for his life, left FRY in January 1993 on a fake passport he obtained by forging a signature and with a friend's help who put the required "Stamps" in his passport. C.A.R. 120 and 064. Krstic testified as to his Well-Found Fear of Future Persecution stating that he feared for his life "because my expressed opposition to that moment, the authorities, in the military, running the government in Yugoslavia, and because I'm mixed, I'm no good for anybody." C.A.R. 120 Krstic also feared he would be detained by Military Security Police and arrested, tortured and executed. C.A.R. 121-123 and 065. Petitioner testified that his mother and father came under a lot of pressure after he left, with friends of his visiting, asking where he was and, later, being visited by the Military Security Police. His parents were also isolated in their neighborhood. C.A.R. 121-122. His parents were simply too old to give up their homes, learn a new language, and start over again in a new country to flee Serbia.

Petitioner has received an Honorable Discharge from the Military, C.A.R. 065 and 134, after he resigned from the Army in May, 1992. C.A.R. 065. Krstic testified that the reason he received the Honorable Discharge was because he did not do anything that was against the official law such as stealing or being charged with criminal acts. Consequently, since this was just before the escalation of hostilities with Bosnia-Herzegovina, and the rule of law to some extent still remained, Krstic was allowed an

Honorable Discharge despite his Political Opinion and mixed Ethnic Heritage. Apparently the threats were made behind the scenes as the evidence would indicate.

After arriving in the U.S. Krstic realized he could never return to his home because the ethnic war in FRY had escalated and expanded into the territories of Bosnia. C.A.R. 024. Because Krstic has a Serbian last name and Croatian first name he would be recognized as not Muslim in the Muslim-dominated Bosnia. Also, he writes everything in a Cyrillic alphabet, at least then, and only the Serbs used a Cyrillic alphabet as opposed to a Latin-based alphabet. C.A.R. 123. Krstic testified that he was surprised and thought it almost unbelievable that matter could escalate in such a short time in FRY and Bosnia-Herzegovina, that such intolerance could emerge in Europe and that it was even possible for it to happen. C.A.R. 122. Krstic fears for his life and safety in the FRY and Bosnia due to his mixed parentage and would not be treated well in either sector. C.A.R. 067. Petitioner testified that he would be viewed as impure and in the Serb controlled sector he would be subject to persecution on account of his Political Opinion and actions as set forth above, especially his refusal to continue to serve in the Serbian Army or paramilitaries. C.A.R. 067 and 117. In the Croat-Muslim Sector there are very few Serbs at the present time as they have been "ethnically cleansed" or have abandoned their homes and businesses due to the well-publicized conflict. Due to Krstic's last name, a Serb name, he would be viewed as impure ethnically, and he is Catholic – not Muslim. C.A.R. 067. Krstic testified in his Form I-589, Request for Asylum in the United States, that

after Milosevic's victory on last elections on December, 1992, I had to flee the country to save my life. C.A.R. 323.

REASONS FOR GRANTING THE PETITION

ISSUE 1

Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), overruled in part by *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) in that the Substantial Weight of the Evidence proves Petitioner suffered Past Persecution.

The Decision of the U.S. Court of Appeals for the Eleventh Circuit in denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum and upholding the Decision of the IJ below is against the Substantial Weight of the Evidence in that Petitioner met his burden of proof pursuant to INA Section 208(a) re Asylum and in proving Past Persecution and a Well-Founded Fear that has a "reasonable basis" in reality for occurring if Krstic is forced to return to the FRY, or Bosnia as the IJ designated. See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) and *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987.) Petitioner's Statement

of the Facts is incorporated by reference as if set forth herein. The Decision of the IJ states that Krstic failed to introduce sufficient concrete or direct evidence to prove he has a Well-Founded Fear of Persecution on account of Political Opinion or national origin. C.A.R. 069. This conclusion by the IJ and the Eleventh Circuit is clearly against the Substantial Weight of the Evidence. Krstic's unimpeached, credible testimony was detailed and consistent with the Objective documentary evidence in the record. Krstic's family history of fighting against Communism, his public resignation from the Communist Party while still an active Captain in the military (and in spite of the price his father paid for similar actions years earlier) and his public protest Resignation from the Military, all provide ample legal evidence of Krstic's Political Opinion and provide the nexus for why he would be persecuted on account of his political opinion. Indeed, he was constantly interrogated, had his apartment unlawfully searched, phone tapped and, later, was subject to intimidating and threatening phone calls. And, finally, he was warned by friends of threats against his safety, freedom and what Krstic believed to be his life, even invoking torture. This is set forth above in detail in the Statement of the Facts. No one would argue that persecution did not exist while the Communists were in power. And a Past Persecution claim need not rest on a past "atrocious form" of persecution to meet the requirements of 8 C.F.R. Section 208.13(b)(1)(i). See also *Matter of C-Y-Z*, 21 I&N Dec. 915, 919 (BIA 1997). And *Asani v. INS*, 154 F.3d 719, 722-25 (7th Cir. 1998) noted that Past Persecution does not require physical violence. And pursuant to *Garrovillas v. INS*, 156 F.3d 1010, 1016-17 (9th Cir. 1998) and *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), Past Persecution, like other asylum claims, does *not* require corroborative evidence but may be

established through the applicant's own credible testimony. This is contrary to the faulty legal analysis by the Eleventh Circuit regarding what acts constitute persecution. See 11th Circuit Opinion at App. 4.

ISSUE 2

Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above in that the Substantial Weight of the Evidence proves Petitioner would be Singled Out if forced to return to Bosnia or the Former Republic of Yugoslavia.

Krstic testified credibly and in detail and was never impeached or shown to contradict his testimony. See POB at pages 3-10 re Petitioner's Statement of Facts that summarizes and highlights his testimony. Not only did Krstic's father revoke his Communist Party membership at the cost of much suffering to his father, C.A.R. 321, but Krstic did so too, a year *before* the old Yugoslav Communist Party ceased to exist. C.A.R. 321 and POB at page 4. Contrary to the 11th Circuit's finding and Respondents' claim below, citing the IJ Decision (see RAB at page 8) that Krstic's testimony was "vague and unsubstantiated" regarding his parents and his claims for a well-founded fear of future persecution the Substantial Weight of the evidence is otherwise (see POB at pages 9 and 10) re Krstic's testimony about his parents – how they were under a lot of pressure after he left his country, with the Military Security Police questioning them, the neighbors isolating them and friends visiting his parents. C.A.R.

121-122. Respondents below state that Krstic "fails to explain how his mother, a Muslim, and his father, a Serb, have continued to safely reside in a suburb of Belgrade, Serbia." RAB at pages 8-9. But Krstic has already explained this in his testimony that he feared returning to Serbia because of his Political Opinion, not his National Origin; whereas he feared returning to Bosnia because of his Serb last name, C.A.R. 067 and 123, because he writes everything in the Cyrillic alphabet, C.A.R. 123, which only the Serbs use and because he is Catholic and Bosnia is mostly Muslim. C.A.R. 067. See also Respondent's own summary of the above reasons at RAB at page 7. Krstic's mother would have taken her husband's last name, a Serb name, and therefore she would not be noticed. Also, very few women in Serbia work, let alone Muslim women, so the opportunity for discovery was quite low.

In the U.S. State Department Country Reports for 1998, the objective evidence there notes how Serb President Milosevic effectively controls the 100,000 man heavily armed Serbian Police force responsible for internal security, C.A.R. 258 and POB at page 18; how the Serbian Police committed numerous serious and systematic human rights abuses, C.A.R. 2158 and POB at page 18; how the Serb Communists' human rights record worsened significantly, C.A.R. 259 and POB at page 19; Serbian Police extra-judicial killings, disappearances, torture, brutal beatings and arbitrary arrests and detention, C.A.R. 259 and POB at page 19; and the Milosevic Government's open harboring of indicted war criminals. C.A.R. 259 and POB at page 20.

And yet Respondents would have this Court believe their version of the record where at RAB at pages 6 and 7 they state:

> " . . . Krstic admitted however that it was normal procedure for army officers to be debriefed after travel outside the country . . . " C.A.R. 113.

Respondents below omit the rest of Krstic's relevant *and* on point testimony re the above issue of debriefing where Krstic testified that *AFTER* the normal debriefing, he was AGAIN questioned by Army Security Officers for glorifying the style and values of life in the United States. C.A.R. 113 and POB at page 5. Krstic testified about his mental persecution due to his apartment being subject to unreasonable and illegal searches, wiretaps on his phone and *continuing* unreasonable interrogations with possible very serious consequences. C.A.R. 321 and 323 and POB at pages 5 and 6. Respondents again distort the record by stating *only* how Krstic "was promoted to the rank of Captain while in the former Yugoslavian army, served in a highly technical military occupational specialty, and received an honorable discharge upon his resignation as well as permission to travel to the U.S. and Germany." C.A.R. 057-074 and RAB at pages 17 and 18.

Respondents below omit any reference to the objective documentary evidence in the record that corroborates Petitioner's testimony such as the translated, certified *and unimpeached* letters he wrote to the Yugoslav Peoples Army (JNA), C.A.R. 248-251, POB at page 13, re Krstic's resignation letter explaining his anti-Milosevic Political Opinion and objections to the Military Policy being planned and pursued that he believed would force him and others to commit "*ethnic cleansing*" or "genocide" in Bosnia, Serbia and elsewhere. See C.A.R. 023, 064 and 116-118, and POB at pages 7 and 13. Further, the Court should reference the *written responses in the record* Krstic received from the Chief of General Headquarters on 05-15-1992, Order No. 11-6,

C.A.R. 252-253, and accompanying Orders, C.A.R. 254-256, plus POB at page 13.

Krstic testified that he was the subject of threatening phone calls with threats like, "we'll get you," C.A.R. 119 and 064 and POB at pages 7 and 8. Later, Krstic received warnings from his friends in the military that his name had come up and that those in the Military loyal to Milosevic said they will deal "with Dario, too." C.A.R. 119 and POB at page 8, and that his name was on a list. C.A.R. 119 and POB at page 8. Krstic, fearing he would be detained by Military Security Police and arrested, tortured and executed, obtained a fake passport by forging a signature and having a friend put the required "stamps" in his passport so he could escape the Former Republic of Yugoslavia (hereinafter FRY). C.A.R. 120-123 and 064-065, and POB at pages 8 and 9.

The above criticism of Krstic failing to proffer credible, direct and specific evidence is not supported anywhere in the record and most certainly not in the decision of the Immigration Judge upheld by the 11th Circuit. Where the IJ does not make a credibility determination the court will presume credibility. See *Artiga-Turcios v. INS*, 829 F.2d 720, 723 (9th Cir. 1987). The Decision of the IJ likewise stated that Krstic failed to introduce sufficient concrete or direct evidence to prove he has a Well-Founded Fear of Persecution on account of Political Opinion and National Origin. C.A.R. 069 and POB at page 11. The 11th Circuit's conclusions and the IJ Decision are contrary to the Substantial Weight of the evidence as well as the law. The evidence herein, testimonial and documentary, compels a Reversal of the Decision by the 11th Circuit upholding the Decision of the BIA affirming the Decision of the IJ as Petitioner has established that his fear is "reasonable"

pursuant to *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) and that there is at least a 1 in 10 chance of the feared event or events occurring if Krstic is forced to return to Bosnia.

Not only does the Substantial Weight of the evidence compel a Grant of Asylum to Petitioner but the law does as well, especially with regard to past persecution. Respondents raise the issue of "Changed Country Conditions" in their Answer Brief at pages 14 and 18. At page 14 Respondents state in their Answer Brief:

> " . . . The objective component may also be established by an applicant's *showing of past persecution which triggers a rebuttable presumption* of a well-founded fear of future persecution. See 8 C.F.R. Section 208.13(b)(1)(i) (2002). The ***INS may rebut that presumption*** *by a preponderance of the evidence* showing that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of [future] persecution," 8 C.F.R. Section 208.13(b)(1)(i)(A), or that "the applicant could avoid future persecution by relocating to another part of [his] country . . . and under all the circumstances it would be reasonable to expect the applicant to do so. 8 C.F.R. Section 208.13(b)(1)(i)(B)." (emphasis added)

The 11th Circuit, the Decision of the IJ and Respondents below all fail to mention, let alone rebut, the independent expert testimony of Petitioner's expert witness, Professor Robert M. Hayden, J.D., Ph.D., Associate Professor of Anthropology, Associate Professor of Law, and Director, Center for Russian and East European Studies at the University of Pittsburgh. See C.A.R. 227-239 and POB at page 21. Professor Hayden also relies on the U.S. State

Department Country Reports. POB at page 21 and C.A.R. 068, 231 and 238, contrary to the IJ's distortion of the record. See *Matter of V-F-S-*, 21 I&N Dec. 792, 798-99 (BIA 1997) where the BIA stated that Country Condition profiles described by the U.S. State Department have been found to be "the most appropriate and perhaps the best resource for information on conditions in foreign nations."

The Decision of the 11th Circuit upholding the BIA Decision affirming the Decision of the IJ and the Answer Brief of Respondents are clearly contrary to the Substantial Weight of the evidence in that Petitioner has met his statutory and discretionary burdens under INA Section 208(a) re Past Persecution for Asylum. The Court should Reverse the Decision of the 11th Circuit upholding the Decision of the BIA affirming the Decision of the IJ and Grant Asylum to Petitioner.

In the alternative, the Court should Remand (or Reverse as above) the case due to the ***admitted*** Decision of the IJ finding that country conditions have changed dramatically since Krstic's departure in 1992. See RAB at page 18 and C.A.R. 119-121.

Pursuant to 8 C.F.R. Section 208.13(b)(1)(i) it is the INS (now CIS), *not* the IJ, that must rebut the presumption of a well-founded fear of future persecution once past persecution is established. See *LAL v. INS*, 255 F.3d 998, 1010-11 (9th Cir. 2001) where the Court there Reversed the BIA for failing to undertake the required individual analysis to establish changed conditions.

And see *Agbuya v. INS*, 241 F.3d 1224, 1231 (9th Cir. 2001) where the Court found that the INS failed to overcome the presumption where the country conditions indicated that kidnapping continued to exist by Philippine communists. And see *Kataria v. INS*, 232 F.3d 1107, 1115-16 (9th Cir.

2000) where the Court held that the INS did not overcome the presumption where country condition reports note that extrajudicial killings still exist. And see *Vujisic v. INS*, 224 F.3d 578, 582 (7th Cir. 2000) where the Court there Reversed the BIA finding that the BIA failed to overcome the presumption by merely asserting, without evidence in the record, that country conditions have changed.

ISSUE 3

Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof and the requirements of *INS v. STEVIC*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

Petitioner incorporates by reference the above Answers to Issues No. 1, 2(a), 2(b) and 3 as well as the Statement of Facts and Argument in Petitioner's Opening Brief as if set forth herein. In the alternative, based on the Substantial Evidence in the record, established through Krstic's testimony, his expert witness, Professor Hayden and the Objective documentary evidence in the record, Petitioner has shown that it is "more likely than not" that he will suffer the feared persecution on account of Political Opinion and/or National Origin if forced to return to Bosnia, consequently meeting his statutory burden of proof pursuant to INA Section 241(b)(3) and *INS v. STEVIC*, 467 U.S. 407 (1984). The Court should therefore Reverse the Decision of the 11th Circuit upholding the

Decision of the BIA affirming the Decision of the IJ and Grant Withholding of Removal to Krstic because the Decision of the 11th Circuit is against the substantial weight of the evidence and contrary to law.

ISSUE NO. 4

Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief under the Convention Against Torture pursuant to 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof in showing that it is more likely than not that he would be "tortured" on account of his Political Opinion in Bosnia by the Bosnian Government or its agents directly or with the knowledge and acquiescence of the current Bosnian Government.

Petitioner incorporates by reference the above Answers to Issues No. 1, 2(a), 2(b), 3 and 4 as well as the Statement of Facts and Argument in Petitioner's Opening Brief as if set forth herein. In the alternative, based on the Substantial Evidence in the record, established by the Testimony of Krstic, his expert witness, Professor Hayden, and the Objective documentary evidence in the record, Petitioner has shown that it is "more likely than not" that he will be subject to mental or physical torture by agents of the Serb Government or those third parties that the Government colludes with and acquiesces in their acts of torture and persecution on account of Political Opinion and/or National Origin. See the State Department Country Reports especially as well as Krstic's testimony to

further establish that he has met his burden of proof pursuant to the Torture Convention Regulations at 8 C.F.R. Sections 208.16-108.18. Consequently, the Court should Reverse the Decision of the 11th Circuit upholding the Decision of the BIA affirming the Decision of the IJ and Grant Relief under the Torture Convention to Petitioner.

CONCLUSION

The petition for a writ of certiorari should be granted. Petitioner has established that the Substantial Weight of the Evidence shows that he has met his statutory burden of proof under INA Section 208(a) re Past Persecution and a Well-Founded fear of future persecution on account of Political Opinion. Further, Petitioner has established that he was "persecuted" and that his Well-Founded Fear of Future Persecution rises to a level of persecution under INA Section 208(a) and applicable case law and regulations cited above. Further, the Decision below is not only contrary to the Substantial weight of the evidence but ignores and distorts the record and, contrary to law, inappropriately limits Petitioner's relief to that of the old Singled Out theory. Petitioner has also met his statutory burdens of proof under INA Section 241(b)(3) and 8 U.S.C. Section 2242, 8 C.F.R. Sections 208.16-208.18 re relief under the Convention Against Torture in that it is more likely than not that Petitioner will be persecuted as alleged above if forced to return to Bosnia.

Respectfully submitted,

DARIO KRSTIC, Pro Se
4820 NE 23rd Avenue #104
Ft. Lauderdale, FL 33308
954-771-5376

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

[stamp] FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 09 2004
THOMAS K. KAHN
CLERK

No. 03-10342
Non-Argument Calendar

BIA Docket No. A29-928-192-

DARIO KRSTIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND
NATURALIZATION SERVICE,

Respondents.

Petition for Review of an Order of
The Board of Immigration Appeals

(February 9, 2004)

Before TJOFLAT, BLACK and BARKETT, Circuit Judges
PER CURIAM:

Dario Krstic, through counsel, petitions for review of the final order of the Board of Immigration Appeals ("BIA") affirming without opinion the decision of the immigration judge ("IJ") which denied Krstic asylum and withholding of removal under the Immigration and

Nationality Act ("INA") and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). Because Krstic's removal proceedings commenced after April 1, 1997, the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) ("IIRAIRA"), this case is governed by the permanent provisions of the INA, as amended by IIRAIRA. *Gonzalez-Oropeza v. U.S. Attorney Gen.*, 321 F.3d 1331, 1332 (11th Cir. 2003); *Balogun v. United States Attorney Gen.*, 304 F.3d 1303, 1309 (11th Cir. 2002). Krstic argues that substantial evidence does not support the IJ's decision he failed to demonstrate his eligibility for asylum or withholding of removal under the INA or the CAT.

To the extent that the IJ's decision was based on a legal determination, review is *de novo*. *Mohammed v. Ashcroft*, 261 F.3d 1244, 1247-48 (11th Cir. 2001). The IJ's factual determinations are reviewed under the substantial evidence test. *See Mazariegos v. U.S. Attorney Gen.*, 241 F.3d 1320, 1323 (11th Cir. 2001). Under this highly deferential standard of review, a denial of asylum may be reversed only if the evidence would compel a reasonable factfinder to find that the requisite fear of persecution exists. *INS v. Elias-Zacarias*, 502 U.S. 478, 481, 112 S. Ct. 812, 815, 117 L. Ed. 2d 38 (1992).

An alien who arrives in or is present in the United States may apply for asylum. *See* INA Section 208(a)(1), 8 U.S.C. Section 1158(a)(1). The Attorney General has discretion to grant asylum if the alien meets the INA's definition of a "refugee." *See* INA Section 208(b)(1), 8 U.S.C. Section 1158(b)(1).

A "refugee" is:

> [A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of *persecution or a well-founded fear of persecution on account of* race, religion, nationality, membership in a particular social group, or *political opinion* . . . "

8 U.S.C. Section 1101(a)(42)(A) (emphasis added). The asylum applicant carries the burden of proving statutory "refugee" status. *See Al Najjar v. Ashcroft*, 257 F.3d 1262, 1284 (11th Cir. 2001). If the applicant meets this burden, then the Attorney General may exercise his discretion to grant the applicant asylum. *Id.* In this instance, because the IJ concluded that Krstic failed to establish his eligibility for asylum there was no exercise of discretion. Accordingly, we only address the question of whether substantial evidence supports the IJ's conclusion that Krstic failed to establish that he was statutorily eligible for asylum.

An alien is entitled to asylum if he can establish, with specific and credible evidence: (1) past persecution on account of his or her political opinion (or other statutorily listed factor), or (2) a "well-founded fear" that his religion, political opinion (or other statutorily listed factor) will cause future persecution. 8 C.F.R. Section 208.13(a), (b); *Al Najjar*, 257 F.3d at 1287. A "well-founded fear" of persecution may be established by showing (1) past persecution that creates a presumption of a "well-founded fear" and by overcoming any rebuttal by the INS, (2) a reasonable

possibility of personal persecution that cannot be avoided by relocating within the subject country, or (3) a pattern or practice in the subject country of persecution members of a statutorily defined group of which he is a part. 8 C.F.R. Section 208.13(b)(1), (2).

Neither the INA nor the regulations define "persecution." Persuasive authority indicates that, to be an act of persecution, the behavior must threaten death, punishment, or the infliction of substantial harm or suffering. *See Sharif v. Immigration and Naturalization Serv.*, 87 F.3d 932, 935 (7th Cir. 1996). Persuasive authority also shows that detention combined with physical attacks can if severe enough, constitute persecution. *Compare e.g., Singh v. Ilchert*, 63 F.3d 1501, 1504, 1512 (9th Cir. 1995) (granting asylum petition of Sikh Indian who was detained without charges for ten days, during which he was hung upside down and beaten with a leather belt such that he lost consciousness and still has difficulty standing up); *Desir v. Ilchert*, 840 F.2d 723, 727-29 (9th Cir. 1988) (alien arrested three times, severely beaten on multiple occasions, and directly fired upon by the Ton Ton Macoutes of Haiti suffered persecution); *with Ravindran v. Immigration and Naturalization Serv.*, 976 F.2d 754, 756-60 (1st Cir. 1992) (no persecution found where member of ethnic minority group was detained and beaten for three days in prison and warned against pursuing political activities); *Kapcia v. Immigration and Naturalization Serv.*, 944 F.2d 702, 704, 706-09 (10th Cir. 1991) (upholding denial of asylum where alien was detained for a two-day period during which time he was interrogated, beaten, and warned not to continue his political activities).

An alien is entitled to withholding of removal under the INA if he can show that, if he were removed, his life or

freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. *Mendoza v. U.S. Attorney General*, 327 F.3d 1283, 1287 (11th Cir. 2003). *See also* INA Section 241(b)(3), 8 U.S.C. Section 1231(b)(3). The alien bears the burden of demonstrating that it is "more likely than not" he will be persecuted or tortured upon being returned to his country. *Fahim v. U.S. Attorney General*, 278 F.3d 1216, 1218 (11th Cir. 2002). If, however, "an applicant is unable to meet the 'well-founded fear' standard for asylum, he is generally precluded from qualifying for either asylum or withholding of deportation." *Al Najjar*, 257 F.3d at 1292-93 (internal citations omitted). Because Krstic has failed to establish a well-founded fear of persecution sufficient to support his asylum claim, he cannot establish that he is eligible for withholding of removal.

To obtain withholding of removal under the CAT, the burden is on the applicant to establish that it is "more likely than not" he will be tortured in the country of removal. 8 C.F.R. Section 208.16(c)(2). "Torture" is defined as

> [A]ny act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

8 C.F.R. Section 208.18(a)(1). The IJ must consider all evidence relevant to the possibility of future torture, including evidence that the applicant could relocate to a part of the country where he is not likely to be tortured. *See id.* Section 208.16(c)(3). The burden of proof for an applicant for withholding of removal under the CAT, as with the applicant under the INA, is higher than the burden imposed on an asylum applicant. Al Najjar, 257 F.3d at 1303-04.

With the foregoing principles in mind, we conclude that the IJ's decision – that Krstic was not entitled to asylum or withholding of removal under the INA or CAT – is supported by substantial evidence in the record.

PETITION DENIED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT stamp: FILED

No. 03-10342

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
Feb 9, 2004
THOMAS K. KAHN
CLERK

BIA Docket No.
A29-928-192

DARIO KRSTIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND
NATURALIZATION SERVICE,

Respondents,

Petition for Review of an Order of
The Board of Immigration Appeals

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: February 9, 2004
For the Court: Thomas K. Kahn, Clerk
By: Jackson, Jarvis

Stamp: ISSUED AS MANDATE APR 05 2004
U.S. COURT OF APPEALS
ATLANTA, GA.

APPENDIX C

Stamp: 03-10342A

NEW CASE FILING

Court of Appeals for the Eleventh Circuit

Dario Krstic
Petitioner
v.
John Ashcroft, Attorney General,
Respondent.

Stamp: FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JAN 23 2003
THOMAS K. KAHN
CLERK

Petition for Review

On Appeal from the Board of Immigration Appeals

Judd B. James, Esq.
Hollywood Immigration Clinic, Inc.
4437 Hollywood Blvd., Suite C
Hollywood, FL 33021
Tel: 945-894-6700
Fax: 954-893-0927

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Dario Krstic, Petitioner v. John Ashcroft, Attorney General, Respondent	)	Petition for Review Agency Case No. A29 928 192

Petition for Review

The Petitioner, Dario Krstic, hereby petitions this Court for review of the attached final order of the Board of Immigration Appeals entered against her on 12-26-2002. The validity of this order has not been upheld by any court.

Respectfully submitted,

Judd B. James, Esq.
Hollywood Immigration Clinic, Inc.
4437 Hollywood Blvd., Suite C
Hollywood, FL 33021
Telephone: (954) 894-6700
Facsimile: (954) 893-0927

By: _____
Judd B. James, ESQ.
Illinois Bar No. 06181629
Admitted to 11th Cir. Ct. of
Appeals 04-02-2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Petition for Review for Dario Krstic, A29-928-192 were served via the U.S. Postal Service, Express Mail, Certified, Return Receipt requested on JOHN ASHCROFT, ATTORNEY GENERAL, Department of Justice, Room B-103, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001 and Mr. JOHN BULGER, INS DISTRICT DIRECTOR, DIVISION VI, 7880 Biscayne Boulevard, 11th Floor, Miami, Florida 33138 this 22nd day of January, 2003.

By: _____
Judd B. James, Esq.

APPENDIX D

U.S. Department of Justice
Executive Office for
Immigration Review
Falls Church, Virginia 22041

Decision of the Board
of Immigration Appeals

File: A29-928-192 – Miami
Date: DEC 26 2002

In re: KRSTIC, DARIO
IN REMOVAL PROCEEDINGS
APPEAL
ON BEHALF OF RESPONDENT: Pro se
ON BEHALF OF SERVICE: William C. Cox,
Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below, is, therefore, the final agency determination. *See* 8 C.F.R. Section 3.1(e)(4).

/ signature Patricia Cole
FOR THE BOARD

APPENDIX E

U.S. Department of Justice
Executive Office for
Immigration Review
Board of Immigration
of Decision of the
Immigration Judge

OMB #1105-0065
Notice of Appeal to
the Board of
Immigration Appeals

For Official use Only
Stamp: RECEIVED
DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
1999 JUL 20 A 11:44
BOARD OF
IMMIGRATION APPEALS
OFFICE OF THE CLERK

1. List Name(s) and "A" Number(s) of all Applicant(s)/ Respondent(s):
Dario Krstic A29-928-192

! WARNING TO ALL APPLICANT(S)/RESPONDENTS(S): Names and "A" numbers of everyone appealing the order must be written in Item #1.

---

2. Applicant/Respondent is currently
___ DETAINED X NOT DETAINED.

3. Appeal from the Immigration Judge's decision dated June 23, 1999.

4. State in detail the reason(s) for this appeal. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

! WARNING: The failure to specify the factual or legal basis for the appeal may lead to summary dismissal without further notice, unless you give specific details in a timely, separate written brief or statement filed with the Board.

The Immigration Judge abused his discretion in finding that the Respondent who is Half-Serbian and Half-Moslem does not have a well founded fear of persecution of returning to Bosnia based on his ethnic background.

The Immigration Judge abused his discretion in finding that the persecutor would not have the inclination or ability to persecute the Respondent due to his negative political opinion and ethnic background.

The Immigration Judge abused his discretion in finding that country conditions in Bosnia have changed significantly enough to alleviate any fears of persecution that the Respondent may have.

The immigration Judge abused his discretion in that he did not properly consider the Expert testimony and abundance of evidence in Respondent's favor in making his decision.

That the Immigration Judge abused his discretion in finding that the Respondent did not establish a reasonable basis to fear persecution under the act and regulations.

5. I [X] do [ ] do not desire oral argument before the Board of Immigration Appeals.

6. I [X] will [ ] will not file a separate written brief or statement in addition to the "Reason(s) for Appeal" written above or accompanying this form.

! WARNING: Your appeal may be summarily dismissed if you indicate in Item #6 that you will file a separate written brief or statement and, within the time set for filing, you fail to file the brief or statement and do not reasonably explain such failure.

SIGN HERE 7. /Signature: Dario Krstic.
Signature of Person Appealing (*or attorney or representative*) Date 7-19-99

8. Mailing address of Applicant(s)/ Respondent(s)
Dario Krstic
405 N. Ocean Blvd.,
Apt. 812
(Apartment or Room Number)
Pompano Beach, FL. 33062

Mailing address of Attorney or Representative
Alexander C. Vrbanoff
641 W. Lake Street
Suite 400
Chicago, IL 60661

! WARNING: An attorney or representative will not be recognized as counsel on appeal and will not receive documents or correspondence in connection with the appeal, unless he /she submits a completed Form EOIR-27.

10. CERTIFICATE OF SERVICE
(Must Be Completed)

I, Alexander C. Vrbanoff, mailed or delivered a copy of this notice of appeal on 7-19-99 to INS District Counsel at 155 South Miami Avenue, 5th Floor, Miami, FL 33130.

SIGN HERE: /signature Alexander Vrbanoff
Signature of Person Appealing
(or attorney or representative)

HAVE YOU?

___ Read all of the General Instructions
___ Provided all of the
___ Signed the form
___ Served a copy of this form and all

requested information
___ Completed this form In English
___ Provided a certified English translation for all non-English attachments

attachments on the opposing party
___ Completed and signed the Certificate of Service
___ Attached the required fee or fee waiver request

APPENDIX F

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Miami, Florida

File No.: A 29 928 192	)	June 23, 1999
In the Matter of DARIO KRSTIC,	)	IN REMOVAL PROCEEDINGS
Respondent	)	

CHARGE: I&N Act – Section 237(a)(1)(B): Relating to an alien admitted as a nonimmigrant under Section 101(a)(15) of the Act, who remained in the United States for a time longer than permitted.

APPLICATIONS: I&N Act – Section 208: Asylum; I&N Act – Section 241(b)(3): Withholding of Removal; Relief under the Torture Convention Regulations; I&N Act – Section 240B(b): Voluntary departure

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Alexander Vabanoff, Esquire	Stuart Segal, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The matter came before the Court as a result of Form I-862, Notice to Appear, which was served on the respondent and marked and admitted as Exhibit Number 1. The Notice to Appear alleges that the respondent is removable pursuant to Section 237(a)(1)(B) of the Immigration and

Nationality Act, relating to an alien admitted as a nonimmigrant under Section 101(a)(15) of the Act, who remained in the United States for a time longer than permitted.

The issue of removability was resolved at a prior Master Calendar hearing, where the respondent, through counsel, acknowledged proper service of the Notice to Appear, admitted the allegations of fact contained there, and conceded the charge of removability.

Based on the evidence of record and the admissions of the respondent's counsel, the Court finds that removability has been established in accordance with the law.

The respondent seeks relief in the form of asylum pursuant to Section 208 of the Act, and withholding of removal pursuant to Section 241(b)(3) of the Act, and relief under the Torture Convention Regulations. In the alternative, the respondent initially requested voluntary departure. However, at the hearing today, he indicated that he did not have current travel documents, and therefore, could not qualify for voluntary departure and that application for voluntary departure was withdrawn.

The respondent's request for asylum in the United States was marked and admitted as Exhibit Number 2, and there were a significant number of documents attached to the application which were also considered part and parcel of Exhibit Number 2.

The respondent submitted additional documentation, personal documentation and documentation relating to country conditions, which was marked and admitted as Exhibit Number 3. The U.S. State Department Human Rights Report for Bosnia and Herzegovina for 1998, was marked and admitted as Exhibit Number 4 in this case.

No other documentary evidence was submitted. However, the Court heard the testimony of the respondent, and also his expert witness, Professor Robert Hayden.

STATUTORY REQUIREMENTS FOR ASYLUM, WITHHOLDING OF REMOVAL, AND RELIEF UNDER THE TORTURE CONVENTION REGULATIONS

Under Section 208 of the Immigration and Nationality Act, the Attorney General, through an Immigration Judge, may grant asylum as a matter of discretion to an individual who is a "refugee" within the meaning of Section 101(a)(42) of the Act. This provision requires that the respondent show that he is unable or unwilling to return to his native country, and unable or unwilling to avail himself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion nationality, membership in a particular social group, or political opinion. *See*, Section 101(a)(42) of the Act; *see also*, *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

In order to establish a well-founded fear of persecution, an alien must show: (1) that he possesses a belief or characteristic a persecutor seeks to overcome by means of punishment of some sort; (2) that the persecutor is already aware or could become aware that the alien possesses this belief or characteristic; (3) that the persecutor has the capability of punishing the alien; and (4) that the persecutor has the inclination to punish the alien. *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

The United States Supreme Court has held that the well-founded fear standard requires a showing that the

fear of persecution is based on a reasonable possibility that such harm will occur. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). This standard is more generous than the clear probability standard applicable to withholding of removal. Persecution is not defined in the Act, but includes both the actual infliction of physical harm, torture, prolonged detention, denial of an opportunity to earn a livelihood, restrictions on life and liberty, and the threat that such harm will be imposed. Persecution will only provide a basis for asylum if it is inflicted at the hands of the government or a group which the government is unable or unwilling to control.

Statutory eligibility for asylum can be established by a showing of past persecution. If an application establishes that he has been persecuted in the past for one of the five grounds enumerated in the statute, he is eligible for a grant of asylum. The likelihood of present or future persecution then becomes relevant as to exercise of discretion, and asylum may be denied as a matter of discretion if there is little likelihood of present persecution. *Matter of Chen*, Int. Dec. 3104 (BIA 1989).

The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in Section 101(a)(42) of the Act. *See*, *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

In some cases, the only available evidence of the alien's subjective fears may be the alien's own testimony. It can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for the alien's fear. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987). In *Matter of Dass*, Int. Dec. 3122 (BIA 1989), the Board held that as an

asylum applicant bears the evidentiary burden of proof and persuasion, where there are significant, meaningful evidentiary gaps, applications for asylum will ordinarily be denied for failure of proof.

The respondent's request for asylum in the United States is contemporaneously viewed as an application for withholding of removal. In order to establish eligibility for withholding of removal, the respondent must show that his or her life or freedom would be threatened in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. *See*, Section 241(b)(3) of the Act. This statutory provision requires that the respondent demonstrate a clear probability of persecution on account of one of the five grounds enumerated in the Act. *See*, *INS v. Stevic*, 467 U.S. 407 (1984). This clear probability standard requires a showing it is more likely than not that the alien would be subject to persecution. The standard for withholding removal is more stringent.

Under the Refugee Act of 1980, withholding of removal is mandatory. A grant of asylum, on the other hand, can be denied in the exercise of discretion, even if the alien establishes statutory eligibility.

In order to qualify for relief under the Torture Convention Regulations, the respondent must show that he is more likely than not to be tortured if he returned to his country of removal. All evidence relevant to the possibility of future torture should be considered when making the determination as to whether the alien is more likely than not to be tortured, including evidence of past torture, evidence that the alien would be able to relocate to an area of the country of removal where he or she is not likely to

be tortured, evidence of gross, flagrant, or mass violations of human rights committed within the country of removal, and other relevant information on conditions in the country of removal. "Torture" is defined as any act by severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person. The act must be by or at the instigation or with the consent or acquiescence of a public official or person acting in an official capacity.

SUMMARIZATION OF FACTS

The respondent testified that he was born on January 9, 1960. He indicates that he is not a citizen of any country at this particular time. He indicated that he was a citizen of the Federal Republic of Yugoslavia, his father a Serbian, and his mother is Muslim. He indicated that he resided in Belgrade in Serbia from 1988 until the time that he left that area. He is not married, and he does not have children. He indicated that he worked in the Military Geographic Institute, and his highest rank was Captain. He was also working in Sarajevo in Bosnia for some time during this military service. He was responsible for reproduction of maps and topographical data. The respondent indicated that he did not like working in Sarajevo. He felt that it was like punishment, and he indicated that he distinguished himself in his class, but he felt that this assignment was like a penalty. He indicated also that while in the military, he was not promoted fairly. He indicated that he was interrogated by security forces after the Olympic Games, when he socialized with a man from Germany, and he was asked about his relationship with him since he was a foreigner. The respondent testified that he felt that someone was questioning his loyalty by making those inquiries. He indicated that he was a member of

the Communist Party, as were all members of the army during that period. He resigned from the Communist Party in 1988. He first came to the United States at the end of 1986 to visit an aunt, and on his return he was debriefed, again and again questioned by security, which was routine for military officers who had returned from a foreign country. He also went to Germany, and he also came to the United States again to visit an aunt. He resigned from the military in May 1992, as he objected to the turning of the military into a group that accepted ethnic cleansing. He felt that the military was attempting to influence Bosnian officers to fight in paramilitary operations. He publicly resigned and he wanted to express his opinion and make it known that he didn't support intolerance or killing. After he resigned, he bought an apartment, but he could not obtain Serbian citizenship or I.D.'s, and couldn't get the documents to establish ownership of his apartment. He indicated that he received telephone calls from unidentified individuals who indicated that they were going to get him. He also had a friend in the military police who advised him that he was on some kind of a list. He could not get citizenship in the Republic of Serbia, because he was not born there. He came to the United States for the last time in January 1993, and he indicated that he feared for his life. He obtained a fraudulent passport to leave. He indicated that he was in military, and military could leave with the permission of their commanding officer, and he had a friend put the stamps on his passport. He applied for asylum several weeks after coming to the United States. He believes that if he is returned to Serbia, he would be arrested; if returned to Bosnia, he indicates that it is Muslim-dominated, and that individuals there would

know that he is not a Muslim and he believes he would be executed there.

On cross-examination, he indicated that he was born in Bosnia, his father a Serbian, and his mother is Muslim. His parents currently reside in Valjevo in Serbia, south of Belgrade. He indicated that his parents have been contacted by a military security force asking about him. He indicated his last contact with his parents was in March 1999 by telephone. His parents are retired. His father gets a pension from the military, but the respondent indicated he also supported them. He indicated that he used to be a soccer player, and when he was in Sarajevo, that helped overcome the problem of having a mixed background. He indicated that he was promoted to Captain in 1989, and he was issued a visa to come to the United States in 1986. After his return, he was debriefed. He resigned from the army in May 1992, and he got an Honorable Discharge. He appeared for citizenship with the Yugoslavian government. He never applied with the Serbian government, and he never applied for a Bosnian citizenship. He indicated that his mother traveled between Serbia and Bosnia during certain periods. He has no immediate family in Bosnia, but he does have extended relatives there. He is aware of country conditions in Bosnia, and he is aware that U.S. and NATO forces are there to preserve the peace among the factions. He is also familiar with the Dayton Accords, however, he is not an expert on it. He is aware that there is a constitution in Bosnia now resulting from the Dayton Accords. He has not been back there since 1993, and he made no efforts to obtain Bosnian citizenship. He indicated that there are Serbian controlled and Muslim controlled and Croatian controlled areas of Bosnia.

In response to questions from the Court, he indicated that he did receive phone calls from unidentified people prior to his departure and those were not mentioned in his asylum application. He also indicated that the telephone call from the military officer who advised him that he was on some list, was not in the initial asylum application, nor in the addendum. There is no document that shows that the respondent was denied citizenship in the Republic of Serbia. He has never been physically harmed, however, he feels that he was psychologically harmed by questioning of him and by being unclear as to where he would be directed for questioning. He also indicated that he had a job with Kodak prior to coming to the United States. He was in Sarajevo from 1982 though 1988, renting an apartment there.

The respondent's expert witness, Professor Robert Hayden, testified that he is a professor on Eastern European affairs, that he was last in Yugoslavia in December 1998, and he has lectured extensively on the area, and he analyzes many reports, news reports, talks to individuals, and researches the area two or three hours per day. He indicated that he is familiar with the respondent, not personally, but through reviewing his asylum application and his statements. He indicated that he is aware that the respondent is half Muslim and half Serbian, and that he was an officer in the Military Geographic Institute. He testified that persons similarly situated in Bosnia, that is, of mixed parentage, are not treated well in either of the sectors. He indicated that they are viewed as being impure. He indicated that there is a Serbian-controlled sector in Bosnia, and a Croatian-Muslim sector. He indicated that in the area where the respondent was born, there are very few Serbs at the

present time. He indicated that the respondent would be a citizen of the Muslim sector of Bosnia, if he were to obtain a Bosnian passport. The witness believes that the respondent would be subject to persecution based upon the fact that he has mixed Serbian and Muslim blood, and he does not believe that he could live in any of the areas in Bosnia. He also indicated that his refusal to continue in the Serbian Army would be a political statement, which would be held against him in Serbian-controlled areas. In response to questions from the Trial Attorney, he indicated that he had been retained to give an opinion. He was paid $1,000.00 for his testimony and his review of the file. He doesn't practice immigration law, and has never practiced immigration law, and never practiced law, and he has never met the respondent personally. He is aware that conditions have certainly changed in Bosnia since the respondent's departure from the former Yugoslavia. He is aware of the Dayton Accords in 1995, and he indicated that Bosnia is basically separated into two entities. He is aware that there is a large multinational force there to ensure that there is no armed conflict. He is aware that there is a stabilization force, whose purpose is to prevent armed conflict, and that there has been a restructuring of the police force. The witness did not believe that the State Department reports are reflective of the true situation, as he believes that they are based upon United States policy goals, and that the situation on the street is different. He indicated that he believes that the respondent would face persecution in Bosnia. In response to questions from the Court, he indicated that he felt the respondent had been persecuted in the past by being questioned after his associations with the German citizen. He also indicated that he believes that the respondent could be persecuted

by being denied residency or housing, or be subject to lack of police support.

LEGAL ANALYSIS AND CONCLUSIONS

The Court concludes that the respondent failed to introduce sufficient concrete or direct evidence to show that he has a well-founded fear of persecution on one of the five enumerated groups. The Court would find that the respondent has not established past persecution with respect to the incidents he described in his applications. The respondent testified he had never been physically threatened, never physically harmed, never detained, nor threatened. He testified to psychological intimidation and fears of being questioned, but the Court does not believe that there's anything in the application which is reflective of anything that would rise to the level of persecution within the meaning of the Act. The respondent testified that he had concerns because he had expressed his political opinions in his resignation from the military. However, the Court would note that he was allowed to resign, he was allowed to have an honorable discharge as a result of service in the military, and the Court did not see evidence of any kind of retaliation for the respondent because of his resignation from the military. The respondent was not arrested, he was not detained, he was not even interrogated or questioned with respect to his resignation from the military. He was allowed and obtained a different job in the private sector. During that period, he was allowed to leave the country. There was no evidence that there were any arrest warrants out for the respondent. The respondent did testify that he received several calls from people who threatened to get him; however, they were very vague and general, and the Court would have to note that these

calls were not mentioned in the initial asylum application, and further, were not even mentioned in the addendum to the asylum application. There was testimony that he had been informed by a police officer friend that the respondent's name was on some kind of list. Again, that was vague testimony, there was no description of what kind of list it was, what kind of concerns anybody had; and, again, the Court would have to note that that telephone conversation was not listed in the initial asylum application nor in the addendum nor anywhere other than in the respondent's testimony today. The Court does not believe that the resignation from the military resulted in any kind of retaliatory action or in any kind of persecution. The Court would believe that if the government had a problem with his resignation or the basis or the reason for his resignation, that they would not have given him the Honorable Discharge.

The Court will next address the respondent's claim that his mixed Serbian and Muslim heritage would result in a well-founded fear of future persecution. Again, this is very difficult to assert, as there is no evidence of any past persecution of any kind with respect to this particular respondent. The Court is cognizant that this, the Former Yugoslavia, is an area where there have been severe human rights violations, and that there has been ethnic cleansing, and the Court is certainly cognizant, based upon the State Department reports and the Human Rights Reports submitted by the respondent that there are certainly clashes between ethnic groups in that area. It is well-known and has been well-publicized that particularly in Serbia and in the Kosovo area with the ethnic Albanians, we are just at this particular time dealing with the problems that were created by President Milosevic. At this

particular date, the bombing has stopped and there is agreement, and there are individuals returning to that area under international supervision, so the Court is certainly not denying or disputing that this is an area where ethnic cleansing and other human rights violations are occurring. The Court, however, just does not believe that the respondent has established that there is a persecutor at this time who would have the inclination or ability to cause harm to the respondent. The Court is aware that in areas where there are clashes between different ethnic groups, there is going to be harassment and there is going to be discrimination, but whether or not that would rise to the level of persecution within the meaning of the Act is certainly another issue. The Court did listen intently to the testimony of the respondent's expert witness, and he is certainly knowledgeable about the things that are going on in that area at this particular time, and the Court found his testimony to be helpful in the Court's analysis of the situation. However, he was very adamant that he believed that this respondent had been persecuted in the past. When asked about what specific examples of persecution had occurred in the past, he talked only about the fact that the respondent had been questioned about his relationship with a German national, and the Court does not find that questioning to be persecution within the meaning of the Act. Certainly, any military officer who is involved in the map making or other intelligence areas is going to be questioned or debriefed with respect to what transpired with his relationships with other foreign nationals and on trips out of the country. There were no specific threats made to the respondent following that, and the Court cannot view that that is persecution. He indicated that there might be discrimination in residency or even with respect to the application of support from the police:

however, the Court does not find that there is any concrete evidence that this respondent would suffer that kind of harassment or that it would rise to the level of persecution within the meaning of the Act.

The Court would have to note that the change in country conditions in Bosnia and Herzegovina, where the respondent would be allowed to return, have certainly changed. Again, the Court recognizes that there is still political and civil strife in those areas, however, they are under the supervision of an international force at this particular time, whose sole purpose is to prevent clashes of that kind. There is no specific evidence of specific events of torture or killing by the police or the government at this particular time. It does appear that it is an area where the government is attempting to try to control any ethnic diversity, at least to the extent that it doesn't rise to armed conflict.

The Court similarly finds that as the respondent failed to satisfy the lower burden of proof required for asylum, it follows that he also failed to satisfy the clear probability standard of eligibility required for withholding of removal. *See*, *INS v. Stevic*, 467 U.S. 407 (1984). The evidence does not establish that if he were now to return to Bosnia, it is more likely than not that he would be subject to persecution on account of one of the five grounds specified in Section 241(b)(3) of the Act. Similarly, the Court finds that the respondent has not established that it is more likely than not that he would be tortured if returned to the country of removal. Certainly, at this time, there is no evidence of past torture with respect to this particular individual, and the Court does not believe that he would be subject to any kind of torture that would be

instigated or done with acquiescence of a public official or person acting in an official capacity at this particular time.

In light of the foregoing and after considering all the testimony and documentary evidence of record, the following order will be issued:

ORDER

IT IS HEREB [sic] ORDERED that the respondent's application or asylum pursuant to Section 208 of the Act be denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal pursuant to Section 241(b)(3) of the Act be denied.

IT IS FURTHER ORDERED that the respondent's application for relief under the Torture Convention Regulations be denied.

IT IS FURTHER ORDERED that the respondent shall be removed and deported to Bosnia, based on the charge set forth in the Notice to Appear.

DATED this 23rd day of June, 1999.

/signature Mahlon F. Hanson
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before MAHLON F. HANSON in the matter of:

DARIO KRSTIC
A 29 928 192
Miami, Florida

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/signature
(Karen J. Bautista, Transcriber)
Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

September 3, 1999
(Completion Date)

APPENDIX G

U.S. Department of Justice
Immigration and Naturalization Service — Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No. A29 928 192

In Matter of:
Respondent: KRSTIC, DARIO currently residing at: 405 N. OCEAN BOULEVARD APT. #817 POMPANO BEACH, FL 33062-0000 954-782-4862

[ ] 1. You are an arriving alien.

[ ] 2. You are an alien present in the United States who has not been admitted or paroled.

[X] 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of former YUGOSLAVIA and a citizen of former YUGOSLAVIA;

3) You were admitted to the United States at DETROIT, MI on or about January 6, 1993 as a nonimmigrant VISITOR FOR PLEASURE with authorization to remain in the United States for a temporary period not to exceed July 5, 1993;

4) You remained in the United States beyond July 5, 1993 without authorization from the Immigration and Naturalization Service.

Stamp: RECEIVED
DEPARTMENT OF JUSTICE
98 SEP 20 PM 3:18
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
OFC. OF IMMIGRATION JUDGE
MIAMI, FLORIDA

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law: Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted.

[ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

[ ] Section 235(b)(1) order was vacated pursuant to:

[ ] 8 CFR 208.30(f)(2) [ ] 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE., ROOM 800, MIAMI, FL 33130-0000 on Jan 12, 1999 at 09:00 AM to show why you should not be removed from the United States based on the charge(s) set forth above.

/ signature illegible
(Signature and Title of Issuing Officer)

Date: 9/22/98 MIAMI, FL

See reverse for important information
Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear is served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to

cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before:

_____ Date: _____
(Signature and Title if INS Officer)

Certificate of Service

This Notice to Appear was served on the respondent by me on 9/28/98, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

[ ] in person [ ] by certified mail, return receipt requested [X] by regular mail

[X] Attached is a list of organizations and attorneys which provide free legal services.

[ ] The alien was provided oral notice in the ___ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

/ signature
(Signature of Respondent if Personally Served)

/ signature (illegible)
(Signature and Title of Officer)